

BALVANT POPATAL POTAL AND AMRAT BHAGA

SUPREME COURT
MUZYAMBA, J.S.

12TH OCTOBER AND 2ND NOVEMBER 2000
(S.C.Z APPEAL NO. 104 OF 1999)

Flynote

Conveyancing - tenants in common - question of whether foreigners can purchase land.

Headnote

The appellant appealed against the dismissal of his claim for registration of his interest in Subdivision F of Stand 3515 Lusaka as a tenant in common and in equal share with the respondent and for an account of all the rentals received by the respondent in respect of the same property.

Held:

- (i) The appellant, infact had an interest in the stand but was denied an order of registration of his interest on the ground that he was a non-Zambian. This was incorrect because when the partes acquired the stand there was no disqualification.
- (ii) An order is made for the registration of the appellants interest in the stand as a common tenant in equal shares with the respondent. Appeal allowed.

For the Appellant P. Chisi, Chifumu Banda & Associates
For the Respondent N/A

Judgment

MUZYAMBA, J.S., delivered the judgment of the court.

This is an appeal against a dismissal of the appellant's claim for registration of his interest in subdivision F of Stand 3515 Lusaka as a tenant in common and in equal share with the respondent and for an account of all the rentals received by the respondent in respect of the same property.

The facts in this case are that in 1979 the parties bought the stand from one Noran Patel. At the time the respondent was a Zambian Citizen and the appellant was a British subject. The property was registered in the name of the respondent as the appellant was under the mistaken impression that as a non Zambian he could not own an interest in land. They then engaged a contractor and expended their resources and built two identical flats on the stand. After completion the respondent occupied his flat. The appellant did not because the respondent who had a daughter at Lusaka International School asked him to lease his flat so that he could raise school fees for his daughter. The appellant agreed. And when the respondent was about to migrate he told the appellant that he would sell his flat and reimburse the rentals for his flat. However, the respondent left the country without fulfilling his promise. The appellant then brought an action against the respondent which was unsuccessful and hence this appeal.

The main ground of appeal is that the learned trial Judge erred in law in dismissing the claim because in 1979 when the property was acquired non Zambians were not barred from owning

land or an interest in land.

The appellant filed and relied on his written heads of argument. The respondent did not appear in this court and in the court below.

We have considered the evidence on record, the Judgment of the learned trial Judge and the appellant's written submissions. The learned trial Judge found as a fact that the appellant had an interest in the stand but refused to order registration of his interest on the ground that he was a non Zambian. This was a misdirection on her part because in 1979 when the parties acquired the stand there was no disqualification. The disqualification came on 1st April 1985. Section 13 A (1) of the Land (Conversation of Titles) (Amendment) (No. 2) Act No. 15 of 1985 provides:

"13 A (1) No land in Zambia shall, as from 1st April, 1985, be granted alienated, transferred or leased to a non Zambian:

Provided that nothing herein shall be so construed as to affect any interest or right acquired by any person prior to that date."

The Section is explicit. We would therefore allow the appeal and order registration of the appellant's interest in the stand as a common tenant in equal shares with the respondent. For this purpose we order rectification of the register at Lands and Deeds Registry by cancellation of the certificate of Title in the name of the respondent and issuance of a new certificate in the joint names of the parties. We also order an account to be taken of all the rentals for the two flats from June 1979 before the Deputy Registrar. Such rentals to be apportioned equally between the parties.

We award costs of the appeal to the appellant to be taxed if not agreed upon.
